

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MICHAEL J. ELLI, individually and on behalf)
of those similarly situated,

)

Plaintiff,)
vs.) Case No.:4:13-CV-0711
CITY OF ELLISVILLE, MISSOURI, et al,) **JURY TRIAL DEMANDED**
Defendants.)

***DEFENDANT CITY OF ELLISVILLE, MISSOURI'S
SUPPLEMENTAL RESPONSE IN OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION***

COMES NOW, Defendant City of Ellisville, Missouri, and for its Supplemental Response in Opposition to Plaintiff's Motion for Preliminary Injunction, states:

1. On April 16, 2013, Plaintiff filed his Complaint, requesting declaratory and injunctive relief in Count I.
2. On April 19, 2013, Plaintiff filed his Motion for Preliminary Injunction, requesting that this Court issue an order prohibiting Defendant, its agents, servants, employees, and attorneys from seizing, citing, or prosecuting any individual within the City of Ellisville for communicating by flashing his or her headlamps. See Doc. 5.
3. Effective May 14, 2013, Police Chief Tom Felgate of the City of Ellisville issued a Special Order to the Ellisville Police Department that "motorists who flash their headlamps on and off, or who flash their headlamps alternating between high beams and low beams, in both

emergency and non-emergency situations, are not subject to citation or prosecution under City of Ellisville Code Section 375.100.” See Ex. A, City of Ellisville Special Order No.SO 2013-1.

4. Pursuant to the above Special Order, Plaintiff’s request for Preliminary Injunction is moot because the City of Ellisville Police Department is no longer issuing any summonses or citations for the violation referred to in Plaintiff’s Complaint.

5. On May 28, 2013, a hearing was held with the Court on Plaintiff’s Motion for Preliminary Injunction. Defendants appeared and opposed this request. In support of its opposition to Plaintiff’s Motion, Defendants argued that Ex. A constituted the official policy of the City of Ellisville Police Department with regard to the Ellisville police not issuing summonses under the identified city ordinance for the alleged conduct complained of in Plaintiff’s Complaint.

6. In response to further argument as to the adequacy of the policy of the Ellisville police as expressed in Ex. A, the Special Order has now been amended to include directives to the Ellisville police that, in addition to proscribing the police from issuing summonses and pursuing prosecutions under the identified ordinance, the Ellisville police will also not be detaining or arresting citizens for the conduct identified in the Plaintiff’s Complaint. See Ex. B, Ellisville Police Department Amended Special Order 2013-1R, attached hereto.

12. Even if one accepts for sake of argument only that the Plaintiffs’ allegations as true, which the Defendants deny, Count I of Plaintiff’s Complaint for Declaratory Relief should be dismissed due to mootness, lack of justiciability, and lack of standing, as the official policy of the City of Ellisville Police Department, as expressed in Special Order 2013-1R, renders moot the issue Plaintiff’s right to an injunction to prohibit the Ellisville police from detaining,

arresting, issuing summonses to or prosecuting individuals under the complained of ordinance, as the official policy of the City of Ellisville is established that no such activity will occur.

Wherefore, defendants move the Court dismiss Count I of Plaintiff's Complaint for injunctive relief, and for such other and further relief as the Court deems proper.

/s/Peter J. Dunne

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I hereby certify that a copy of the foregoing filed electronically with the Clerk of the Court this 6th day of June, 2013 to be served by operation of the Court's electronic filing system upon the following: Anthony E. Rothert and Grant R. Doty, Attorneys for Plaintiff, 454 Whittier Street, St. Louis, Missouri 63108 tony@aclu-em.org and grant@aclu-em.org.

/s/ Peter J. Dunne

June 6, 2013